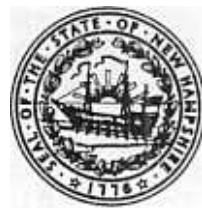




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-5171



Milton Water District
Board of Commissioners
PO Box 428
Milton, NH 03851

Re: Milton Water District Water System
Milton, NH
EPA #1581010

ADMINISTRATIVE ORDER
No. WD 01-32

October 9, 2001

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division, to the Milton Water District pursuant to RSA 485:4 and RSA 485:58. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. The Milton Water District is a political subdivision having a mailing address through its representative, David Paey, Sr., of PO Box 428, Milton, NH 03851. David Paey, Sr., the Chairman of the Board of Commissioners of the Milton Water District, is the designated representative of the Milton Water District for the purpose of water supply issues.

C. STATEMENTS OF FACTS AND LAW

1. RSA 485 authorizes DES to regulate public water supplies. RSA 485:3 authorizes DES to adopt drinking water rules which identify contaminants which may have an adverse affect on health, which establish maximum contaminant levels that are acceptable for human consumption, which establish criteria and procedures to assure compliance with such maximum contaminant levels, and which identify criteria and standards to ensure the proper operation and maintenance of water systems. Pursuant to this authority, DES has adopted NH Admin. Rules Env-Ws 300.
2. The Milton Water District ("District") is the owner of a groundwater-type water system which serves approximately 340 service connections with an estimated population of 850 persons and provides street hydrant fire protection in the community of Milton, NH ("Water System"). The Water System is a community water system as defined in RSA 485:1-a, I and NH Admin. Rule Env-Ws 302.02(i).
3. Former NH Admin. Rule Ws 310.01(b), effective September 5, 1984, now codified as Env-Ws 372.02(a), requires water systems with street hydrant fire protection to conform to former NH Admin. Rule Ws 309 *Design Standards for Water Sources, Storage and Distribution Systems*, now codified as Env-Ws 370.

4. Former NH Admin. Rule Ws 309.01, effective September 5, 1984, now codified as Env-Ws 307.02, adopts by reference the design standards set forth in the "Great Lakes - Upper Mississippi River Board of State Public Health and Environmental Manager's *Recommended Standards for Water Works*" ("Recommended Standards").
5. Since 1982, Part 3, Section 3.2.1.2 of the Recommended Standards has consistently required a water system using groundwater to have a minimum of two groundwater sources.
6. NH Admin. Rule Env-Ws 306.01(b) requires that each community water system be subject to a sanitary survey once every three years. The purpose of a sanitary survey is to conduct on-site reviews in order to evaluate the adequacy of the source(s), storage facilities, equipment, operation, and maintenance to produce and distribute safe drinking water.
7. DES records show that, from inception, the Water System has had only one groundwater source, a gravel well located on Route 125 in Milton.
8. By letters dated October 6, 1986 and November 29, 1988, DES informed the Water System that a second groundwater source was required.
9. On January 16, 1989, a sanitary survey was performed at the Water System by DES personnel. The February 8, 1989, survey report identified the lack of a second groundwater source as a deficiency.
10. By letter dated March 23, 1989, the Water System responded to the February 8, 1989 survey report. The Water System indicated that at the March 18, 1989, District meeting, voters had agreed to retain the engineering firm of Dufresne-Henry, Inc. to conduct an investigation to locate a second groundwater source.
11. By letters dated December 18, 1989, and April 16, 1990, Dufresne-Henry, Inc. informed DES of a potential new well site location, known as the "Ball site," but noted a potential problem in obtaining necessary easements for the 400 foot sanitary protective radius.
12. On July 1, 1992, a sanitary survey was performed at the Water System by DES personnel. The July 13, 1992, sanitary survey report identified the lack of a second groundwater source as a deficiency.
13. On or about July 13, 1992, a Letter of Deficiency ("LOD") was issued to the Water System. The LOD addressed the lack of a second groundwater source identified as a deficiency during the July 1, 1992, sanitary survey. The LOD requested the Water System to do the following:
 - a. Install a second groundwater source that met Water Division quantity and quality criteria; and
 - b. Hire a qualified water system consultant to study the Water System's ability to provide an adequate and reliable amount of water and to report the consultant's finding within 45 days of the receipt of the LOD.
14. The LOD was received by the Water system as evidenced by the signed postal receipt.

15. By letter dated August 21, 1992, Dufresne-Henry, Inc. submitted on behalf of the Water System the report requested by the July 1992 LOD. In pertinent part, the report noted that at the 1991 District meeting, voters had overwhelmingly rejected a proposal to develop a second groundwater source at the Ball site. The report further noted that following the 1991 District meeting, another potential site had been located. The new location, a failed development known as Echo Cove Estates, already had two bedrock wells that appeared to have the potential to meet the Water System's need for a second groundwater source. The report stated that Dufresne-Henry, Inc. had been retained to evaluate the Echo Cove Estates site.

16. By letter dated December 15, 1992, Dufresne-Henry, Inc. advised DES that pump test data and water quality results from the Echo Cove Estate site indicated potential problems. The Echo Cove Estates site was dropped from consideration as a second groundwater source.

17. By letter dated July 22, 1994, the Water System's attorney advised DES that the District was proposing to purchase the Ball site to establish a second groundwater source and requested a waiver of certain sanitary protective radius regulations due to the presence of two "gravel ways" within the radius.

18. By letter dated August 29, 1994, DES granted the requested waiver concerning the two gravel ways, provided that the gravel ways were gated.

19. On February 29, 1996, a sanitary survey was performed at the Water System by DES personnel. The April 2, 1996, sanitary survey report identified the lack of a second groundwater source as a deficiency. The survey report also noted that DES had received no correspondence from the Water System since the July 1994 waiver request. A copy of the survey report was sent to the Water System.

20. On or about October 22, 1996, DES sent a letter to the Water System noting that there had been no response from the Water System to the April 2, 1996, sanitary survey report concerning the deficiency identified during the February 29, 1996 sanitary survey (lack of a second groundwater source). The letter requested the Water System to send DES a status report on the development of a second groundwater source by December 2, 1996.

21. On December 5, 1996, DES received the requested status report from the Water System. The report stated that the Water System had purchased the Ball site and its protective area after determining that the site had adequate water quantity and water quality. The report noted that a capital reserve fund had been established for construction of the pumphouse and for expenses involved in connecting the new source into the existing system. The report also stated that a warrant article would be presented at the March 1997 District meeting to fund an engineering study that would develop a building plan and construction cost estimates and that following the engineering study, various funding plans would be evaluated.

22. At the March 1997 District meeting, voters defeated the warrant article.

23. On August 22, 2000, a sanitary survey was performed at the Water System by DES personnel. The August 29, 2000 sanitary survey report identified the lack of a second groundwater source as a deficiency and noted that the existing well was vulnerable to contamination due to its proximity to Route 125, a rail line, and several homes with on-site septic systems. The survey report

recommends that the Water System prepare a warrant article for appropriation of funds for a second groundwater source at the District's 2001 annual meeting.

24. By letter dated January 29, 2001, Dufresne-Henry, Inc. forwarded to DES data from a 1990 pumping test concerning a well on the Ball site. The letter requested DES to determine if the data met the requirements of NH Admin. Rule Env-Ws 379, *Site Selection of Large Production Wells for Community Water Systems*, which would make it unnecessary to conduct a new pumping test.

25. On or about February 27, 2001, DES responded by e-mail to the January 29, 2001, letter from Dufresne-Henry, Inc. DES indicated further evaluation of the pumping test data by the Water System was needed before DES could determine if the data met the requirements of NH Admin. Rule Env-Ws 379.

26. By letter dated February 1, 2001, DES again urged the Water System to prepare and present at the March 2001 annual District meeting a warrant article for the development of a second groundwater source.

27. The Water System did not present a warrant article for a second groundwater source at the March 2001 District meeting. The Water System continues to operate with only one groundwater source.

D. DETERMINATION OF VIOLATIONS

1. The Water System has violated NH Admin. Rule Env-Ws 307.02 by failing to install a second groundwater source.
2. As owner of the Water System, the Milton Water District is responsible for the violation noted herein.

E. ORDER

Based on the above findings, DES hereby orders the Milton Water District as follows:

1. By November 1, 2001, submit to DES for review cost estimates for the development of a second groundwater source. The cost estimates are to include costs associated with testing the potential well(s), the design and construction of the well(s) and pump station, and all facilities and infrastructure necessary to connect the second source to the existing water system.
2. By May 1, 2002, appropriate sufficient funds to finance the testing, design, and construction of a second groundwater source and the facilities and infrastructure necessary to connect the second source to the existing water system.
3. By September 1, 2003, complete the construction of the second groundwater source and the connection of the new source to the existing water system.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Robert Mann, P.E.
Department of Environmental Services
6 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Voice: (603) 271-0672
Fax: (603) 271-3490

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve the Milton Water District of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485:58 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The Milton Water District remains obligated to comply with all applicable requirements, in particular the need to correct all significant deficiencies identified in sanitary surveys and to comply with applicable drinking water statutes and rules. DES will continue to monitor the Milton Water District's compliance with applicable requirements and will take appropriate action if additional violations are discovered.



COPY

Harry T. Stewart, P.E. Director
Water Division



COPY

George Dana Bisbee
Assistant Commissioner

Certified Mail/RRR: 7099 3400 0002 9772 0155

cc: ✓ Gretchen Rule, DES Enforcement Coordinator
Public Information Officer, DES PIP Office
NH AGO
Milton Board of Selectmen
US EPA, Region 1